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IN THE

Supreme Court of the United States

October Term, 1967

No. 322

JOSEPH P. LORDI, Director of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey,

Defendant-Appellant,

vs.

LOUIS J. EPSTEIN and JULIUS EPSTEIN,
t/a Stratford International Tobacco Co.,

Plaintiffs-Appellees.

On Appeal from the United States District Court
for the District of New Jersey

APPELLEES' MOTION AND BRIEF FOR AFFIRMANCE UNDER RULE 16

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New Jersey's refusal of a Class D "transportation license" for which the appellees had applied, and its insistence on application for and obtaining a Class B "plenary wholesale license" as a condition of legality, clearly exceeds the limited sphere reserved for state action in regard to such liquor business conducted solely in foreign commerce and under and in accordance with the national constitutional power to regulate foreign commerce in the national interest 12

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The appellees move for summary affirmance on the ground that the questions on which the decision of the cause depends are manifestly so unsubstantial as not to need further argument.

The plaintiffs brought this action pursuant to Sections 2281 and 2284 of Title 28, U.S.C., to enjoin the threatened enforcement against their business of certain provisions of

the New Jersey Alcoholic Beverage Law, N.J.S.A. 33:1-96. The complaint sought a determination that the statute, as applied, is repugnant to the Commerce, Export-Import, and Supremacy Clauses of the United States Constitution. General jurisdiction is founded upon 28 U.S.C. §1331, a matter in controversy exceeding $10,000.00, and arising under the Constitution and laws of the United States.

The defendant-appellant, who directs New Jersey's Division of Alcoholic Beverage Control, had ruled that the plaintiffs' operations in foreign commerce in wines and liquors are illegal in the absence of acquiring a "plenary wholesale license". His ruling was and is supported by New Jersey's Attorney-General.

The plaintiffs' operations in foreign commerce are conducted pursuant to license, control and supervision of the United States Government under the Tariff Act of 1930, the applicable provisions of the United States Revenue Code, and pertinent regulations thereunder. The federal regulations are elaborately designed to prevent diversion.

New Jersey does not assert that there has in fact been any diversion of the liquor, or any violation or ignoring of any part of the comprehensive federal scheme of regulations and inspections designed to prevent diversion. Nor does New Jersey assert that the federal scheme is inadequate or is not strictly enforced.

The complaint and answer in the action have been filed with this Court by the appellant.

The "Questions Presented" in the Jurisdictional Statement (p. 4) are in essence whether the State of New Jersey may constitutionally ban as illegal the appellees' business unless they acquire "a plenary wholesale license," pursuant to N.J.S.A. 33:1-11.

The pertinent facts have been stipulated by the parties. The Jurisdictional Statement concedes (p. 5) that they "are not in dispute."

The court below granted the injunction prayed. Its unanimous opinion and judgment are attached to the Jurisdictional Statement as Appendix A (p. 1a), and are officially reported in 261 F. Supp. 921.

The appellees adopt the following unanimous statement below in summarizing the preceding decisions by this Court and their controlling effect here (261 F. Supp. 921, 935; Jurisdictional Statement, p. 21a):

> "Applying the above analysis to the present matter, this Court finds Stratford's operations to be essentially within the same stream of foreign commerce which was emphasized in Hostetter (377 U. S. 324) and Ammex (378 U. S. 124). The transactions in New Jersey are subject to the same Federal supervision of that commerce, and the 'ultimate delivery and use' also occurs outside the State. From those basic parallels and from a consideration of the State and Federal interests involved, we conclude that Stratford's activities are similarly protected under the Commerce Clause and similarly beyond New Jersey's power under the Twenty-first Amendment.
>
> "To be sure, there are factual variations among the sales methods employed in each case, but these are not

decisive. The imposition of constitutional restraints upon State regulation of commerce turns on the substance of the transaction, not on overly nice distinctions between constructive possession and conditional delivery, or the like. The gist of the matter, in all these situations, is that corporations are selling liquor within the State and transferring physical custody conditioned and controlled by Federal law which destines it for use in foreign commerce. That was why the Commerce Clause applied in Hostetter and Ammex, that is why it applies with equal force here."

The Facts

The court below in its opinion made the following accurate summary of the stipulated facts (261 F. Supp. at 927; J. S. at 3a):

> "The pertinent facts have been stipulated by the parties; the remaining determinations are issues of law. Plaintiffs conduct their business as a partnership under the name Stratford International Tobacco Co. [Stratford] from 504 Clinton Avenue, Newark, New Jersey, which premises are not licensed by the State.
>
> "Stratford's operations are carried on pursuant to Federal importer's and exporter's basic permits which authorize it to import in-bond liquor into the United States and to sell, deliver and ship such liquor in interstate and foreign commerce. Stratford also holds a license and its drivers are bonded and hold identification cards, all issued by the Bureau of Customs, which authorize its drivers to transport in-bond liquor in Stratford's trucks.
>
> "Liquor imported by Stratford enters the Port of New York or the Port of New Jersey [a division of

the Port of New York area], where it is consigned to the custody and care of the Collector of Customs. In addition to importing liquors from abroad, Stratford also purchases in-bond liquor from bonded distilleries in the United States, which is delivered by bonded carrier into bonded warehouses in New Jersey.

"All the liquor, whether imported or domestic, is brought into New Jersey by Stratford solely for export. As such, the liquor is constantly subject to the control and custody of the United States Treasury Department, Bureau of Customs or Bureau of Internal Revenue, from the moment of entry into the state until its ultimate release for consumption in foreign commerce. The control is effected through a comprehensive scheme of regulation and inspection procedure pursuant to Sections 309, 311 and 317 of the Tariff Act of 1930, as amended, 19 U.S.C. §§1309, 1311 and 1317, related portions of the Internal Revenue Code, as amended, 26 U.S.C. §§5012, 5062 and Treasury Regulations promulgated by the Bureau of Customs, 19 C.F.R. parts 8, 12, 18, 19, 21, 23 and 25."

In the margin the court below added the following as also the stipulated facts (261 F. Supp. at p. 927; J. S. at 4a):

"Upon arrival of the imported liquor consigned to the Collector of Customs, Stratford receives a notice of arrival, bills of lading, and various certificates. The liquor is then carried to a United States Customs bonded warehouse in a bonded truck owned by Stratford, or by a bonded common carrier and, in either event, a vehicle licensed by the Customs for such carriage. The warehouse itself is under the jurisdiction and control of the Federal Government.

"Once stored, the liquor may only be withdrawn and delivered pursuant to an equally rigorous policing

system. Sales orders are solicited by phone, by mail or in person either at shipping line offices or directly from ship officers at dockside. To withdraw ordered liquor, Stratford obtains a permit with several copies from the Customs office in Newark. The copies are delivered to the customs inspector at the warehouse. He retains a copy and gives two others to the bonded carrier which delivers the liquor in its original package to shipside. At shipside, a second customs inspector makes sure that the liquor is placed on board the ship and sealed; he then sends a copy of the withdrawal permit, properly noted, back to the Customs authorities.

"By virtue of these operations, the liquor is legally in bond continuously from the moment of its entry into New Jersey until the delivery on board for Stratford's customer. Moreover, under federal law, such liquor may not be removed from its package nor consumed until the ship is beyond the territorial waters of the United States."

FIRST POINT

Under repeated decisions by this and other courts, the Twenty-First Amendment does not govern.

The appellees' business in tax-free bonded liquors for export under federal statutes, regulations, license and supervision throughout, does not entail transportation of intoxicating liquors for "delivery or use" within New Jersey within the meaning of the Amendment. As said below, the liquors are continuously "in the stream of foreign commerce" serving national policies and interests which predestine the liquors for use outside the United States.

The appellant's Jurisdictional Statement recognizes (p. 16) that "the majorities in *Hostetter* and *Ammex*" held the 21st Amendment inapplicable because the ultimate delivery and use is not in the State but in a foreign country, notwithstanding the prior physical transfers of the liquor in its preceding stream of foreign commerce; but the appellant characterizes such *ratio decidendi* as "intellectual gymnastics," and the appellant asserts (pp. 15, 16) that any "actual physical delivery" within the State incidental to the movement in foreign commerce entails "the plenary power of the State under the 21st Amendment,"—all of which is a scarcely veiled way of saying that, stripped of semantic "gymnastics," those decisions were wrong and "a judicial revision of the Amendment," and that "we do not believe that a Commerce Clause inquiry is relevant".

But these decisions have, as recently as April 1966, been cited by this Court as firm law in *Seagram & Sons v. Hostetter*, 384 U. S. 35, 42.

The national purposes and objectives in exempting from tax bonded liquor moving in foreign commerce are expressly stated in the title of the Tariff Act of 1930 itself, of which Sections 309, 311 and 313, and related portions of the Internal Revenue Code, are parts. The title reads:

> "An Act to provide revenue, to regulate commerce with foreign countries, to encourage industries of the United States, to protect American labor, and for other purposes."

The courts have always recognized these national purposes. To quote *National Distillers Products Corporation* v. *City and County of San Francisco*, 297 P. 2d 61, cert. denied, 352 U. S. 928:

> "These (national) provisions would seem to constitute regulation of foreign commerce in the instant case just as similar provisions did in the *Gulf Oil* case. Certainly the purpose of the regulatory scheme is to encourage commerce and give a competitive advantage to these items."

In *Ammex Warehouse* v. *Department of Alcoholic Beverage Control*, 224 F. Supp. 546 (aff'd 378 U. S. 124) the District Court (3 judges) subsequently made like statement of the national objectives. It cited therefor both the decision of this Court in *McGoldrick* v. *Gulf Oil Corp.*, 309 U. S. 414 at p. 427, and the reliance thereon in the *National Distillers* case *supra* (p. 555).

In *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 212 F. Supp. 376, aff'd 377 U. S. 324, the federally licensed seller had its advertised sales-office and its liquor (tax-free and bonded for export) inside the Kennedy airport in New

York City and State. There the buyer came, selected and ordered his desired liquor, made payment therefor, and received a receipt and title. The seller then transported the purchaser's designated liquor from its office and delivered it into the physical custody of the purser of the foreign-bound airline for ultimate handing to the purchaser outside the territorial limits of the United States. Nevertheless the District Court and this Court held that the 21st Amendment did not govern because "ultimate delivery and use is not in New York, but in a foreign country" (377 U. S. at 333; 212 F. Supp. at 384).

In the *Ammex* case, 224 F. Supp. 546, aff'd 378 U. S. 124, there was not only a sale by Ammex to the ultimate consumer at its display room located within the State of California and one mile from the Mexican border, but also *a manual transfer* of the liquor by it to him in an area sixty feet wide on the California side of the border. Nevertheless the District Court (3 judges) found immaterial and "a distinction without a difference" (p. 556) this factual variation from the *Idlewild* case, since the customer thereby received within the State only "the physical custody of the liquor and the legal possession of the liquor remains in the Customs agent until the moment the purchaser crosses the border" (224 F. Supp. at p. 556). "If he does not cross the border, the custody may be taken from the customer." (*Id.* at 549).

This Court must have concurred in thus finding immaterial this factual variation consisting of the seller's manual handing of the liquor within the State to the purchaser himself, for this Court tersely affirmed (378 U. S. 124) on the authority of "***Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 377 U. S. 324.**"

Hence *Idlewild* is controlling, and *Ammex* is *a fortiori*.

In *Collins* v. *Yosemite Park Co.*, 304 U. S. 518, the defendant imported liquor into California from places outside California and transported it through California for delivery to itself in Yosemite Park (a national Park), and for subsequent delivery to and consumption by purchasers buying from it in the Park. Notwithstanding that the Park was within the continental territory of the United States, this Court held the 21st Amendment inapplicable because (p. 538):

> "There was no transportation into California 'for delivery or use therein.' The delivery and use is in the Park, and under a distinct sovereignty."

This *Collins* decision was followed in *Johnson* v. *Yellow Cab Co.*, 321 U. S. 383, 387, and was later described by this Court in *Carter* v. *Virginia*, 321 U. S. 131, 137, as holding that "shipment through a state is not transportation or importation into the state within the meaning of the (21st) Amendment."

In its most recent decision, to wit *Seagram & Sons* v. *Hostetter*, 384 U. S. 35, this Court, in rejecting Seagram's argument that the 21st Amendment was there inapplicable, nevertheless said as to *Idlewild* (p. 42):

> "In *Idlewild* the ultimate delivery and use of the liquor was in a foreign country. * * * Unlike *Idlewild*, the present case concerns liquor destined for use, distribution, or consumption in the State of New York."

We conclude this Point by quoting the following from the lower court's footnote (261 F. Supp. at pp. 935-6; J.S. pp. 22a, 23a):

"Stratford physically transfers liquor to the shipping lines for distribution to the ultimate consumers on the high seas. Such physical transfer to the passenger carrier also was made in *Hostetter*. But, since Stratford sells to the shipping line, rather than to the consumer, it makes delivery directly to its vendee, as was true in *Ammex*. Neither of these facts sufficed individually to free New York or California from the Commerce Clause, and their coincidence here requires no different result.

"New Jersey urges that completion of both an intermediate sale and a delivery to someone other than the ultimate consumer takes the liquor out of any continuous process of exportation for use in foreign commerce.

"The direct answer to this is that the sale to the carrier is not 'completed' in New Jersey, in view of the finding in *Ammex* that legal possession of such bonded liquor remains in the Customs officer until the border is crossed (or, in our case, until the ship sails beyond territorial waters). If the vessel, or aircraft, or pedestrian tourist fails to leave the United States, Customs may reclaim the liquor. More importantly, the liquor's distribution or use in this country remains a Federal offense. The States have no interest in 'delivery' as such, but only insofar as such transfers raise the possibility of diversion. Idlewild Bon Voyage Liquor Corp. v. Epstein, supra, 212 F.Supp. at 384. The liquor delivered to Stratford's vendees at dockside is as restricted to foreign use, by passengers and crew, as was the liquor delivered to the airlines in *Hostetter*. In any real sense, then, the liquor must be deemed to be constantly in the stream of foreign commerce."

SECOND POINT

Since settled constitutional law excludes New Jersey's right to forbid the appellees' federally licensed business in foreign commerce by reason of what the Jurisdictional Statement terms (p. 16) "the plenary power of the State under the Twenty-First Amendment," New Jersey cannot by indirection jeopardize the appellees' business and the specific national policies and objectives for which it is federally licensed by imposing conditions not clearly and reasonably confined and directed to the narrow purpose of protecting New Jersey against diversion of the bonded liquor while in transit under full federal supervision and federal policing against diversion.

New Jersey's refusal of a Class D "transportation license" for which the appellees had applied, and its insistence on application for and obtaining a Class B "plenary wholesale license" as a condition of legality, clearly exceeds the limited sphere reserved for state action in regard to such liquor business conducted solely in foreign commerce and under and in accordance with the national constitutional power to regulate foreign commerce in the national interest.

The court below said (261 F. Supp. at 937; J.S. 25a):

> "The local interest is clearly defined. Assertion of the police power over federally supervised liquor in bond is predicated on the danger of diversion;"

Neither in its answer nor in its Jurisdictional Statement has New Jersey made any claim that, or shown any instance where, diversion has occurred. Nor has it attempted to show, or even to explain, wherein the Tariff and

Internal Revenue statutes and the elaborate Customs Regulations and continuous federal supervision under which the appellees operate are inadequate or ineffective or have been found such.

Nor does the appellant claim that this detailed federal scheme of minute and continuous supervision is illegal in whole or in part or is not enforced.

We believe that the lower court's opinion on this subject (261 F. Supp. at pages 937 to 941; Jurisdictional Statement, pp. 25a to 35a) states the self-evident and is conclusive. To quote (p. 937; p. 25a):

> "to the extent that it (the federal supervision) minimizes this danger (of diversion), the Federal scheme, while not preempting State action, reduces its justifiable scope.
>
> "The Tariff and Internal Revenue statutes and the Customs Regulations under which Stratford is already operating are elaborate; indeed, they constitute a maze of regulation. The provisions for supervising physical transfer or delivery of the liquor are particularly detailed, *supra*, p. 927, n. 3. The comprehensive policing covers the entire period for which the liquor is in New Jersey. The Director has 'neither alleged nor proved the diversion of so much as one bottle of plaintiffs' merchandise to users within the State of [New Jersey].' *Idlewild Bon Voyage Liquor Corp.* v. *Epstein, supra*, 212 F. Supp., at 386."

This statement of the limited scope constitutionally permissible for State action is fully supported by classic decisions by this Court.

Thus in *Dean Milk Co.* v. *City of Madison*, 340 U. S. 349, an ordinance of a Wisconsin municipality forbade the sale in the city of milk as pasteurized unless it had been pasteurized and bottled at an approved pasteurization plant within five miles of the center of the city. Appellant, an Illinois corporation engaged in gathering and distributing milk from farms in Illinois and Wisconsin, was denied a license to sell its product within the city solely because its pasteurization plants were more than five miles away. In holding that this ordinance was a violation of the Commerce Clause of the Federal Constitution, this Court said (p. 354):

> "A different view, that the ordinance is valid simply because it professes to be a health measure, would mean that the Commerce Clause of itself imposes no limitations on state action other than those laid down by the Due Process Clause, save for the rare instance where a state artlesaly discloses an avowed purpose to discriminate against interstate goods. • • •
>
> "Our issue then is whether the discrimination inherent in the Madison ordinance can be justified in view of the character of the local interests and the available methods of protecting them. Cf. *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202, 211 (1944)."

True, in this *Dean Milk* case this Court was weighing an allegedly discriminatory measure against alternative measures available to the city, but the Court's logic applies with equal force in the case of burdens and restrictions imposed by a State upon specific foreign commerce, even though they be not discriminatory, when the national authorization and interest has been exerted and embodied in a national license accompanied with fully particularized

measures against misuse or diversion. See *Bibb* v. *Navajo Freight Lines*, 359 U. S. 520; *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, where this Court said (p. 782):

> "The state interest cannot be preserved at the expense of the national interest by an enactment which regulates interstate train lengths without securing such control, which is a matter of national concern. To this the interest of the state here asserted is subordinate."

In this case, the Federal "statutes and regulations taken together operate as regulations of foreign commerce" in the national interest; and any state action which is an infringement or impairment of, or an interference with, their full purpose and free functioning, must fail constitutionally (*McGoldrick* v. *Gulf Oil Corp.*, 309 U. S. 414, 427, 429).

As said by Mr. Justice Jackson, concurring in *Duckworth* v. *Arkansas*, 314 U. S. 390, 401:

> "But to let each locality conjure up its own dangers and be the judge of the remedial restraints to be clamped onto interstate trade inevitably retards our national economy and disintegrates our national society."

The appellees had applied under N.J.S.A. 33:1-13 for a Class D "Transportation License" (opinion below, pp. 928, 938; Jurisdictional Statement, pp. 7a, 27a); but (*id.*):

> "The Director concluded that since the plaintiffs had not procured a wholesale license for their solicitation and sales of tax free liquor, they could not be granted a transportation license to transport liquor for such unlicensed activity."

Of such a "transportation license" the court below said (p. 938; p. 27a):

> "Such a license, issued under N.J.S.A. 33:1-13 and augmented by rules appropriate to its scope, would provide ample authority to permit some supervision of the liquor's transport and transfer until it left the State on board the departing vessels. The fact that Class D licenses would not support regulation of the sales transactions themselves is of no moment; for whatever Stratford's terms of sale, method of solicitation or means of competition, it is the physical movement and storage of the liquor itself which creates the opportunities for diversion. And the physical control would be ensured by the web of Federal and State inspection and custody."

As a precaution, the lower court added in a footnote (p. 938; p. 28a):

> "Of course, this is not to imply that New Jersey would have carte blanche authority to regulate Stratford in any way it chose even under the Transportation license. We need place no such imprimatur on the Class D permit or the permissible scope of regulations thereunder applicable to Stratford. The validity of the transportation license requirement is not before us since the plaintiffs have agreed to accept one. If its implementation leads to rules applied to Stratford which are challenged as outside the sphere permitted New Jersey by *Hostetter* and *Ammex*, that too will be 'another case for another day.'"

The plaintiffs are not doing liquor business except that in tax-free bonded liquor under federal constitutional license for foreign commerce. New Jersey's position that this specific federally licensed business is illegal unless the

plaintiffs apply for and are granted a "Plenary Wholesale license" (Class B) is tantamount to nullifying the federal license and objectives and to creating by indirection what the appellants call "plenary power" in New Jersey.

The New Jersey statute as to such a "Plenary Wholesale license" is quoted in the lower court's footnote (pp. 926, J.S. 2a); and of it the lower court said (pp. 937, J.S. 26a):

> "In this context, the Class B wholesale license applied to Stratford inherently exceeds the limited sphere reserved for State action in regard to such liquor trade. The cases indicate no more than New Jersey's power to oversee the storage and movement of the bonded shipments through her territory. Moreover, those decisions actually approving some regulation involved no comprehensive Federal scheme remotely comparable to that presented here. Yet the wholesale license subjects Stratford to the Director's wide ranging power to regulate all aspects of the sales transactions themselves, as well as other facets of its business having little if any relation to the minimal dangers of diversion."

Among other things, a "Plenary Wholesale license" would restrict the plaintiffs to selling and distributing "to retailers and wholesalers licensed in accordance with this chapter"; and to selling "from inventory in a warehouse located in New Jersey which is operated under a plenary wholesale license". It would also require plaintiffs to pay an annual fee of $3,000,—thus adding what in effect would be a large tax upon what Congress had in its exercise of power freed from taxation for the accomplishment of national objectives in the interest of American industry and labor.

Should New Jersey be upheld in attempting such interferences and barriers, New York would be stimulated to escalate thereon by superimposing on the plaintiffs' like business on its side of the Port a required application for a plenary wholesale license and the payment therefor of an annual fee of $5,000 (N. Y. Alcoholic Beverage Control Law, Section 66 as amended L. 1963, c. 204, §13).

Furthermore, the statutory content of a New Jersey "Plenary Wholesale license" (N.J.S.A. 33:1-11) entails much more, as shown in detail in the following footnote to the opinion below (p. 937; J.S. p. 27a):

> "Section 33:1-11 itself merely states that the Class B wholesale licensee shall operate 'subject to rules and regulations * * *' This proviso is implemented by Section 33:1-39 which lists the broad range of subjects over which the Director may issue rules and regulations appropriate to the subjects encompassed by each class of license. For the impressive sweep of the Director's powers over, *inter alia*, wholesale transactions and distribution within New Jersey, see *Boller Beverages, Inc.* v. *Davis*, 38 N. J. 138, 183 A.2d 64 (1962). 'Section 39 * * * then goes on in a second paragraph to specify some 30 detailed categories which general rules and regulations may cover, some of which relate to matters also the subject of specific statutory sections and others of which are not otherwise mentioned in the act, and winds up with sweeping authority to promulgate regulations relating to 'practices unduly designed to increase consumption of alcoholic beverages * * * and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of the law.'"

Also, as the lower court likewise noted in a footnote (p. 939; J.S. p. 8a) the same New Jersey statute makes it a misdemeanor to make an unlicensed sale.

Local taxation of bonded liquor in the stream of foreign commerce, under circumstances quite similar to those of the instant case, has been struck down as an impermissible interference with foreign commerce. *National Distillers Products Corporation* v. *City and County of San Francisco*, 297 P.2d 61, *cert. denied* 350 U. S. 928.

In that case, San Francisco imposed *ad valorem* personal property taxes on certain cases, among others, of bonded, federally-regulated liquor stored in that city prior to being sold in bond directly to owners of vessels engaged in foreign commerce, and placed in bond upon such vessels as ships' stores, to be consumed at sea (p. 63). The court ruled that the bonded liquor was subject to the federal regulations of foreign commerce designed to encourage commerce and give a competitive advantage to such items, and that the imposition of the local taxes would result in an interference with this purpose (p. 65). The City of San Francisco had argued that, since the liquor transactions could be broken down into two steps, namely, a shipment into San Francisco and a subsequent shipment out in foreign commerce, the storage of such goods in San Francisco constituted a break in transit so as to remove them from interstate commerce. To this the District Court replied (p. 66):

> "However, in the instant case the goods are not immune from local taxation because they had been traveling in interstate commerce. Rather, under the rationale of the Gulf Oil case, they derive their immunity from local taxation under the commerce clause by reason of the fact that the federal government has regulated their manufacture, transportation, storage, and exportation in furtherance of commerce, and that such taxes would constitute an interference with that regulation."

The District Court also unanimously affirmed the following finding of fact and conclusion of law by the trial court (p. 63):

> "The court found that 'the production, transportation to San Francisco, detention in a public warehouse, and movement aboard vessels under bond for delivery to customers and destinations in foreign countries or consumption on the high seas constituted integrated steps in a movement of goods in interstate and foreign commerce in the process of shipment either to foreign destinations or for consumption aboard vessels on the high seas, in accordance with plaintiff's plan and intent.'"

We conclude by urging as self-evident the conclusion of the court below (p. 941, J.S. p. 35a):

> "We hold that the burden imposed is so substantial, and the ensuing interference with national policy so clearly avoidable, that the application of N.J.S.A. 33:1-11 to Stratford must fail as an impermissible restraint on foreign commerce. We concur with the plaintiffs that such a requirement is defective both in that it imposes the undue burden we have just examined and that it subjects Stratford to inherently excessive State regulation."

Conclusion

The appellees' motion for summary affirmance should be granted, with costs.

Respectfully submitted,

CHARLES H. TUTTLE
Attorney and Counsel for Appellees